

NO. 24651
Filed with
Date Filed 5/25/01
C2
Yes

By: Allen R.

**Interim Surplus Guidelines Agreement
Between the
State of Arizona and the Metropolitan Water District of Southern
California**

THIS AGREEMENT is entered into this 13th day of May, 2001 by the State of Arizona ("Arizona"), acting through the Arizona Department of Water Resources ("Arizona DWR") and the Metropolitan Water District of Southern California ("MWD"), a California metropolitan water district.

RECITALS

A. The State of Arizona holds a contractual right for the delivery of Colorado River water in the amount of 2.8 million acre feet plus one-half of any surplus or excess water unapportioned by the Colorado River Compact to the extent such water is available for use within Arizona. 1944 Arizona Session Laws, Ch. 4 (1st Special Session). The 1944 Colorado River contract provides that deliveries of water thereunder shall be made for use within Arizona to such individuals, irrigation districts, corporations or political subdivisions of Arizona as may contract therefor with the Secretary. The Secretary has entered into contracts with various individuals, irrigation districts, corporations and political subdivisions within Arizona for the delivery of Colorado River water. The Arizona Department of Water Resources ("Arizona DWR") is an agency of the State of Arizona, created under Arizona Revised Statutes, Title 45, Chapter 1, Article 1 and authorized to prosecute and defend all rights, claims and privileges of the State of Arizona respecting interstate streams. Arizona DWR is specially authorized to enter into this contract pursuant to Senate Joint Resolution 1001, 45th Legislature, First Regular Session.

B. Metropolitan Water District of Southern California ("MWD") is a metropolitan water district organized under the California Metropolitan Water District Act, codified at § 109-1 of the Appendix to the California Water Code, and delivers Colorado River and other water in Los Angeles, Orange, Riverside, San Bernardino, San Diego and Ventura Counties, California for domestic and irrigation purposes.

C. The United States Secretary of the Interior ("Secretary") is responsible for the operation of the reservoirs of the Colorado River system and controls the release and delivery of Colorado River water in the Lower Division states pursuant to the Decree issued in *Arizona v. California*, 376 U.S. 340 (1964), the Boulder Canyon Project Act of 1928, the Colorado River Basin Project Act of 1968 and other acts amendatory or supplementary thereto.

D. Palo Verde Irrigation District (“**PVID**”), the Yuma Project (Reservation Division) (“**YPRD**”), the Imperial Irrigation District (“**IID**”), and the Coachella Valley Water District (“**CVWD**”) collectively hold California’s first three priorities to Colorado River water and are collectively entitled to the beneficial consumptive use as reasonably required on specified lands of not to exceed 3,850,000 acre-feet each year. The fourth and fifth priorities totaling 1,212,000 acre feet per year are held by MWD. The sixth priority of 300,000 acre-feet per year is held by IID, CVWD and PVID for beneficial consumptive use as reasonably required on specified lands. The seventh priority of all remaining water available for use within California is reserved for agricultural use in the Colorado River Basin, as defined within California, which includes the lands within IID, CVWD, YPRD and PVID. MWD and CVWD also have surplus water delivery contracts with the Secretary of the Interior for the delivery of water that may be released by the Secretary under Article II(B)(2) of the Decree in *Arizona v. California*, 376 U.S. 340 (1964).

E. The pending Quantification Settlement Agreement among MWD, IID and CVWD (“**QSA**”) proposes to settle a variety of long-standing disputes regarding the priority, use and transfer of Colorado River water within the State of California and will establish the terms for the further distribution of Colorado River water among the entities for up to seventy-five (75) years, based upon the water budgets set forth therein.

F. The QSA is conditioned upon the Secretary promulgating and implementing Interim Surplus Guidelines.

G. To assist the California agencies and to provide greater certainty of water supply for lower basin users, the representatives of the governors of the Colorado River basin states collectively developed an “Interim Surplus Guidelines – Working Draft” which was published in the Federal Register on August 8, 2000 at Volume 65, number 153, pages 48531-48538 and is attached hereto as Exhibit 1. Certain technical corrections to the Basin States’ Proposal were made and noted in the Federal Register on September 22, 2000 at Volume 65, number 185, page 57371. These corrections are attached hereto as Exhibit 2 (collectively the “**Basin States’ Proposal**”).

H. The Basin States’ Proposal was adopted, with some modification, in the Secretary’s Record of Decision for Colorado River Interim Surplus Guidelines (“**Interim Surplus Guidelines**”), dated January 16, 2001 and published in the Federal Register at Volume 66, number 17, page 7772-7782 (January 25, 2001). A copy of the Record of Decision is attached hereto as Exhibit 3.

I. The Basin States’ Proposal requires that certain commitments be made by MWD for the benefit of the State of Arizona. The purpose of this agreement is to implement the commitments between MWD and the State of Arizona outlined in the Basin States’ Proposal and to clarify how MWD and the State of Arizona intend to facilitate implementation of the Interim Surplus Guidelines.

J. Neither the State of Arizona nor MWD intend to, and under this agreement do not in any way transfer, assign, encumber, or grant to each other any ownership interest in or control over each other's water rights.

ARTICLE 1 DEFINITIONS

1.1 As used in this agreement, the following terms have the following meanings:

- 1.1.1 **af.** Acre-foot, a measure of volume.
- 1.1.2 **Annual Operating Plan or "AOP".** The Annual Operating Plan for the Colorado River System Reservoirs transmitted to the Governors of the Colorado River Basin States each year by the Secretary in accordance with section 602 of the Colorado River Basin Project Act, 43 U.S.C. § 1552(b).
- 1.1.3 **Arizona Water Banking Authority.** The Arizona Water Banking Authority created under Arizona Revised Statutes § 45-2401 *et seq.*
- 1.1.4 **Basin States' Proposal.** The proposal of the representatives of the governors of the Colorado River basin states published in the Federal Register on August 8, 2000, Volume 65, number 153, pages 48531-48538, attached hereto as Exhibit 1, and including the technical corrections published in the Federal Register on September 22, 2000 at Volume 65, Number 185, page 57371, attached hereto as exhibit 2.
- 1.1.5 **Benchmark Date.** The Year in which California Agricultural Water Usage must be at or below a specified Benchmark Quantity in order to maintain the operation of the Interim Surplus Guidelines under sections 2(B)(1) and 2(B)(2). The specific Years are listed in the table in section 3.2 of this agreement.
- 1.1.6 **Benchmark Quantity.** A limitation on the total quantity of California Agricultural Water Usage in a Benchmark Year necessary to maintain the operation of the Interim Surplus Guidelines under sections 2(B)(1) and 2(B)(2). The specific quantities are listed in the table in section 3.2 of this agreement.
- 1.1.7 **Bureau of Reclamation.** The United States Bureau of Reclamation, acting through the Lower Colorado River Regional Office, Boulder City, Nevada.
- 1.1.8 **California Agricultural Agencies.** Palo Verde Irrigation District (PVID), Yuma Project (Reservation Division) (YPRD), Imperial Irrigation District (IID) and Coachella Valley Water District (CVWD).

- 1.1.9 **California Agricultural Usage.** The cumulative total consumptive usage of Colorado River water by the California Agricultural Agencies, plus 14,500 af of present perfected right use reserved for certain Indian communities, cities and individuals within California.
- 1.1.10 **Colorado River Aqueduct.** The existing aqueduct system owned and operated by MWD to transport water from Lake Havasu on the Colorado River to Lake Mathews in Riverside County, California.
- 1.1.11 **Direct Delivery Domestic Use.** The direct delivery of water to domestic end users or other municipal and industrial water providers within the contractor's area of normal service, including incidental regulation of Colorado River supplies within the year of operation but not including Off-Stream Banking. "Direct Delivery Domestic Use" for MWD shall include delivery of water to end users within MWD's normal area of service, incidental regulation of Colorado River water supplies within the year of operation, and Off Stream Banking only with water delivered through the Colorado River Aqueduct.
- 1.1.12 **Decree in *Arizona v. California*.** The Decree entered by the United States Supreme Court in *Arizona v. California*, 376 U.S. 340 (1964) and supplements thereto.
- 1.1.13 **Domestic Use.** As defined in the Colorado River Compact of 1922.
- 1.1.14 **Flood Control Release.** The release of water from Lake Mead and the operation of Hoover Dam for flood control purposes pursuant to the reservoir operating criteria specified in the February 8, 1984 Field Working agreement between the U. S. Army Corps of Engineers and the Bureau of Reclamation, and the U. S. Army Corps of Engineers regulations contained in 33 C.F.R. Part 208.11, as in effect on the date that this agreement is executed.
- 1.1.15 **Flood Control Surplus Year.** A Year in which the Secretary makes a Flood Control Release.
- 1.1.16 **Full Domestic Surplus Year.** A Year in which the Secretary has determined a full domestic surplus, as defined in the Interim Surplus Guidelines.
- 1.1.17 **Interim Period.** A fifteen-year period of time, commencing on January 1, 2002 and ending December 31, 2016 during which the Interim Surplus Guidelines are intended to operate.
- 1.1.18 **Interim Surplus Guidelines.** The federal guidelines described in the Record of Decision dated January 16, 2001, published in Fed. Reg. Vol. 66, No. 17, page 7772-7782 (January 25, 2001) and attached hereto as Exhibit 3.

- 1.1.19 **maf.** Million acre-feet, an expression of volume.
- 1.1.20 **Normal Year.** A year when the Secretary determines, under applicable authority including but not limited to Article II(B)(1) of the Decree in *Arizona v. California*, and the Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs Pursuant to the Colorado River Basin Project Act of September 30, 1968, that no more than 7.5 million acre-feet of Colorado River water shall be delivered for consumptive use in Arizona, California and Nevada collectively. During the Interim Period, the Secretary is expected to determine a Normal Year or Shortage Year when Lake Mead storage is projected to be at or below elevation 1125 ft. on January 1, pursuant to section 2(A)(1) of the Interim Surplus Guidelines.
- 1.1.21 **Off Stream Banking.** The diversion of Colorado River water to underground storage facilities for use in subsequent years from the facility in which the water was stored by a contractor diverting such water.
- 1.1.22 **Partial Domestic Surplus Year.** A Year in which the Secretary has determined a partial domestic surplus as defined in the Interim Surplus Guidelines.
- 1.1.23 **Quantified Surplus Year.** A Year in which the Secretary has determined a quantified surplus as defined in the Interim Surplus Guidelines.
- 1.1.24 **Secretary.** The Secretary of the United States Department of the Interior, and duly appointed successors, representatives and others with properly delegated authority, including the Regional Director of the Lower Colorado Region of the Bureau of Reclamation.
- 1.1.25 **Shortage Year.** Any year when the Secretary determines, under Article II(B)(3) of the Decree in *Arizona v. California*, and the Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs Pursuant to the Colorado River Basin Project Act of September 30, 1968, that insufficient water is available for release to satisfy annual consumptive use of 7,500,000 af in the states of California, Nevada and Arizona collectively.
- 1.1.26 **Year.** A calendar year beginning January 1 and ending December 31. When preceded by another defined term, such as “Quantified Surplus Year,” Year shall mean the Year in which the quantified surplus is being released by the Secretary under the Annual Operating Plan.
- 1.1.27 **70R Strategy.** OS 0.70 alternative strategy as described in the Bureau of Reclamation’s CRSSez Annual Colorado River System Simulation Model Overview and Users Manual, revised May, 1998.

ARTICLE 2 BASIC PROVISIONS

- 2.1 Subject in all events to the specific terms and conditions of this agreement:
- 2.1.1 The purpose of this agreement is to create the specific contractual responsibilities between MWD and State of Arizona regarding the implementation of the Interim Surplus Guidelines as such guidelines exist on the date of this agreement, and notwithstanding any change in the Interim Surplus Guidelines. These contractual responsibilities include the intentional forbearance from the use of Colorado River water that the parties might otherwise be entitled to divert under existing law and contracts. To the extent that the use of Colorado River water is intentionally forborne by one of the parties to this agreement for the exclusive use of the other, the Secretary will, under authority of Article II(B)(6) of the Decree in *Arizona v. California*, make that water available to the intended recipient.
 - 2.1.2 MWD agrees that it shall: (1) implement or facilitate the implementation of conservation measures and water transfers within the State of California to gradually reduce diversions of Colorado River water for consumptive use within the State of California; (2) place its orders for delivery of Colorado River water with the Secretary in a manner that upholds the commitments of this agreement and reduces total consumptive use of Colorado River water within the State of California; and (3) make reparation to the State of Arizona for shortages of Colorado River water if the Secretary has released surplus water to MWD in a Full or Partial Domestic Surplus Year. Each of the foregoing shall be performed in accordance with the provisions of this agreement.
 - 2.1.3 The State of Arizona agrees that it shall: (1) through Joint Resolution of the Arizona Legislature waive a portion of its rights to surplus Colorado River water and cause contractors within Arizona to refrain from ordering surplus Colorado River water from the Secretary in certain quantities in certain years, in accordance with the terms of this agreement; and (2) waive any claim against MWD for shortages of Colorado River water arising from the release of surplus water to MWD in a Full or Partial Domestic Surplus Year during the Interim Period. Each of the foregoing shall be performed in accordance with the provisions of this agreement.
 - 2.1.4 Nothing in this agreement shall preclude the consumptive use of Colorado River water in California in excess of the quantities specified in this agreement if such Colorado River water is apportioned to but unused by other states of the Lower Division and such water is released for use within California by the Secretary under Article II (B)(6) of the Decree in *Arizona v. California*.

- 2.1.5 Nothing in this agreement shall preclude the operation of accounting policies validly adopted by the Bureau of Reclamation that allow California to overrun consumptive use limits in some Year(s) provided that such water is repaid to the system in subsequent Year(s). The State of Arizona does not, by this agreement, waive any claim that such policies have not been validly adopted, are a violation of the Decree in *Arizona v. California*, or are otherwise not in accordance with law.

ARTICLE 3
MWD'S OBLIGATION TO CAUSE OR FACILITATE CONSERVATION
MEASURES AND WATER TRANSFERS WITHIN THE STATE OF
CALIFORNIA DURING THE INTERIM PERIOD

- 3.1 To insure that California can limit its consumptive use of Colorado River water to no more than 4.4 maf after the 15 year Interim Period, unless a surplus is thereafter determined under the 70R Strategy, MWD shall implement or facilitate the implementation of conservation measures and water transfers within the State of California to gradually reduce California Agricultural Usage.
- 3.2 California Agricultural Usage must be at or below the following listed amounts by the end of the calendar year indicated, absent consideration of any surplus water use under a Flood Control Release or a Quantified Surplus Year, and absent any consideration of sub-article 2.1.5:

Benchmark Date By end of Year	Benchmark Quantity* California Agricultural Usage
2003	3.74 maf
2006	3.64 maf
2009	3.53 maf
2012	3.47 maf

* For Decree accounting purposes all reductions must be within 25,000 acre-feet of the amounts stated.

- 3.3 If California Agricultural Usage has not reduced to the above Benchmark Quantities by the Benchmark Date, the interim surplus determinations under sections 2(B)(1) and 2(B)(2) of the Interim Surplus Guidelines are expected to be suspended by the Secretary and surplus quantities, if any, are expected to be determined by the Secretary under the 70R Strategy during the suspension.

Independent of any such action by the Secretary to suspend the Interim Surplus Guidelines, MWD shall make its order for Colorado River water to the Secretary in any Year following a missed Benchmark Date in an amount necessary to insure that consumptive use of Colorado River water within the State of California does not exceed 4.4 maf plus any surplus determined by the Secretary to be available to the State of California under the 70R Strategy.

- 3.4 If California Agricultural Usage meets the missed Benchmark Quantity before the next Benchmark Date, the interim surplus determinations under sections 2(B)(1) and 2(B)(2) of the Interim Surplus Guidelines are expected to be reinstated as the basis for the surplus determinations under the AOP for the next following year(s). Upon such reinstatement, MWD's orders for Colorado River water to the Secretary shall be as stated in Article 4 below.
- 3.5 For Year 2017, MWD shall make its order for Colorado River water to the Secretary in an amount necessary to insure that consumptive use of Colorado River water within the State of California does not exceed 4.4 maf plus any surplus determined by the Secretary to be available to the state of California under the 70R Strategy.
- 3.6 MWD shall not cause the diversion of Colorado River water for Off Stream Banking in years of interim surplus determinations under sections 2(B)(1) and 2(B)(2) of the Interim Surplus Guidelines unless the water is delivered through the Colorado River Aqueduct.
- 3.7 Nothing in this article shall be construed to allow the State of California to receive more Colorado River water in any Shortage Year or Normal Year than would otherwise be allowed under existing law.

ARTICLE 4

MWD's OBLIGATIONS FOR ORDERING COLORADO RIVER WATER IN NORMAL AND SURPLUS YEARS DURING THE INTERIM PERIOD

- 4.1 This article sets forth the limitations on MWD's orders of Colorado River water under Normal Year, Partial Domestic Surplus Year, Full Domestic Surplus Year, Quantified Surplus Year and Flood Control Release Year conditions during the Interim Period.
- 4.2 **Normal Year.** In years when available Lake Mead storage is projected to be at or below elevation 1,125 feet but the Secretary has not declared a Shortage Year, MWD shall make its order for Colorado River water to the Secretary in such year in an amount necessary to insure that consumptive use of Colorado River water within the State of California does not exceed 4.4 maf, subject to consideration for subarticles 2.1.4 and 2.1.5.

- 4.3 **Partial Domestic Surplus Year.** In years when Lake Mead storage is projected to be between elevation 1125 feet and elevation 1145 feet on January 1, a Partial Domestic Surplus is expected to exist under the Interim Surplus Guidelines. For such Year, MWD shall make its order for surplus Colorado River water to the Secretary as follows:
- 4.3.1 For Direct Delivery Domestic Use by MWD, 1.212 maf reduced by: (1) the amount of basic apportionment available to MWD and (2) the amount of its domestic demand which MWD offsets in such year by offstream groundwater withdrawals or other options. The amount offset under (2) shall not be less than 380,000 af in 2002 and will be reduced by 20,000 af/year over the Interim Period so as to equal 100,000 af in 2016.
- 4.4 **Full Domestic Surplus Year.** In years when Lake Mead content is projected to be above elevation 1145 feet, but less than the amount which would initiate a surplus determination under a Quantified Surplus Year or Flood Control Surplus Year on January 1, a Full Domestic Surplus is expected to exist under the Interim Surplus Guidelines. For such Year, MWD shall make its order for surplus Colorado River water to the Secretary as follows:
- 4.4.1 For Direct Delivery Domestic Use by MWD, 1.250 maf reduced by the amount of basic apportionment available to MWD.
- 4.5 **Quantified Surplus Year.** In years when the Secretary determines that water should be released for beneficial consumptive use to reduce the risk of potential reservoir spills based on the 70R Strategy, a Quantified Surplus Year shall exist under the Interim Surplus Guidelines. MWD and the State of Arizona agree that the Secretary is expected to determine and allocate the Quantified Surplus sequentially as follows, and MWD shall make its order for surplus Colorado River water to the Secretary for such year based on the following determination and allocation:
- 4.5.1 The Secretary establishes the volume of the Quantified Surplus;
- 4.5.2 The Secretary is expected to allocate and distribute the Quantified Surplus 50% to California; 46% to Arizona and 4% to Nevada subject to the following:
- 4.5.3 California's share is expected to be allocated first to meet basic apportionment demands and MWD's Direct Delivery Domestic Use and Off-Stream Banking demands, and then to California Priorities 6 and 7 and other surplus contracts. Nevada's share is expected to be allocated first to meet basic apportionment demands and then to the remaining Direct Delivery Domestic Use and Off-stream Banking demands. Arizona's share is expected to be allocated to surplus demands in Arizona including Off-stream Banking and interstate banking demands.

- 4.5.4 The Secretary is expected to distribute any unused share of the Quantified Surplus in accordance with section 1(B) of the Interim Surplus Guidelines.
- 4.5.5 The Secretary is expected to determine whether MWD, SNWA and Arizona have received the amount of water they would have received under a Full Domestic Surplus if a Quantified Surplus had not been declared. If they have not, then MWD, SNWA and Arizona contractors may place their orders for Colorado River water as if the Secretary had determined a Full Domestic Surplus.
- 4.5.6 MWD and the State of Arizona agree that any remaining water shall remain in storage in Lake Mead.
- 4.6 **Flood Control Surplus Year.** In years when the Secretary makes a Flood Control Release, or in the AOP determines a Flood Control Surplus Year, MWD and the State of Arizona agree that releases may be made to satisfy all beneficial uses within California and Arizona, including unlimited Off Stream Banking and section 215 deliveries under the Reclamation Reform Act of 1982 (95 Stat. 1263). MWD and Arizona contractors may make their orders for Colorado River water to the Secretary without any limitation under this agreement. Thereafter, the Secretary may notify the United States Section of the International Boundary and Water Commission that there may be a surplus of water as provided in Article 10 of the *Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande, Treaty Between the United States of America and Mexico*, signed February 3, 1944 (“Mexican Water Treaty of 1944”).

ARTICLE 5
MWD’S OBLIGATIONS IN SHORTAGE YEARS
DURING AND AFTER THE INTERIM PERIOD, OR IN THE EVENT OF A
SUSPENSION OF THE INTERIM SURPLUS GUIDELINES

- 5.1 This article sets forth the limitations on MWD’s orders of Colorado River water under Shortage Year conditions both during and after the Interim Period.
- 5.2 **MWD’s Obligations During the Interim Period.** If the Secretary determines a Shortage Year during the Interim Period, MWD shall make its order for Colorado River water to the Secretary for that Shortage Year in an amount necessary to insure that total consumptive use of Colorado River water within the State of California does not exceed 4.4 maf for that Shortage Year. In addition, if the Secretary has released water to MWD under either a Partial Domestic Surplus or a Full Domestic Surplus during the Interim Period, and if the Secretary declares a later year in the Interim Period to be a Shortage Year in which deliveries to Arizona will be reduced, MWD agrees

to compensate for the impact of such shortage upon the State of Arizona as follows:

- 5.2.1 MWD shall make or reduce its order for Colorado River water to the Secretary for that Shortage Year in an amount necessary to insure that the total consumptive use of Colorado River water in the State of California shall be less than 4.4 maf. The amount by which MWD shall be required to reduce consumptive use of Colorado River water in the State of California below 4.4 maf shall be the same amount by which the Secretary limits consumptive use of Colorado River water in the State of Arizona below 2.8 maf for that Shortage Year. During the Interim Period, MWD's obligation to reduce consumptive use of Colorado River water within the State of California shall be subject to a 500,000 af yearly maximum. The water intentionally forborne by MWD pursuant to this paragraph shall be available exclusively for consumptive use in the State of Arizona under Article II(B)(6) of the Decree in *Arizona v. California*.
- 5.2.2 MWD and Arizona DWR may agree upon a program to share the impact of shortages in any Shortage Year. Upon learning of the potential for shortage in the AOP promulgation process, MWD and Arizona DWR shall meet and confer regarding the relative impact of shortage on the respective states. If it appears that the shortage may last more than one year, Arizona DWR may, after consultation with affected Colorado River contractors in Arizona, consent to allow MWD to spread the shortage reparation over more than one year. In the event such an agreement is made, MWD shall reduce its order for Colorado River water to the Secretary for the next two or more years to implement the terms of such an agreement and to insure that total consumptive use of Colorado River water in the State of California shall be reduced below 4.4 maf to meet the agreed upon amount of reparation for each year.
 - 5.2.2.1 In the event that such an agreement is made, but the year(s) following the first Shortage Year are not declared to be Shortage Years, MWD shall nevertheless retain the obligation to intentionally forbear use of Colorado River water and return the water owing to the State of Arizona in subsequent years. In such event, MWD acknowledges that the water might not be needed for direct use in Arizona and, if not so needed, shall pay the actual cost to store the forborne water in Arizona through the Arizona Water Banking Authority, such costs to be agreed upon by the parties to such agreement.
- 5.2.3 MWD may enter into an interstate banking arrangement with the Arizona Water Banking Authority at some future time. If such an agreement is made, it may include the opportunity for MWD to call upon credits held by the Arizona Water Banking Authority for the benefit of MWD to replace water that otherwise would be required to be forborne by MWD under the terms of this agreement. In the event that such an agreement is

made, the terms thereof shall modify the terms of this agreement only as expressly provided in such future agreement, and only as agreed to by the parties to this agreement.

5.3 **MWD's Obligations after the Interim Period arising from a Partial Domestic Surplus or a Full Domestic Surplus.** If the Secretary has released water to MWD under either a Partial Domestic Surplus or a Full Domestic Surplus during the Interim Period, and if the Secretary declares a year after the Interim Period to be a Shortage Year, MWD agrees to compensate for the impact of such shortage upon the State of Arizona as follows:

5.3.1 MWD shall make or reduce its order for Colorado River water to the Secretary for that Shortage Year in an amount necessary to insure that the total consumptive use of Colorado River water in the State of California shall be less than 4.4 maf. The amount by which MWD shall be required to reduce consumptive use of Colorado River water in the State of California below 4.4 maf shall be the same amount by which the Secretary limits consumptive use of Colorado River water in the State of Arizona below 2.8 maf for that Shortage Year. Notwithstanding the agreement reached in the Basin States' Proposal, MWD's obligation to reduce consumptive use of Colorado River water within the State of California after the Interim Period shall also be subject to a 500,000 af yearly maximum. The water intentionally forborne by MWD pursuant to this paragraph shall be available exclusively for consumptive use in the State of Arizona under Article II(B)(6) of the Decree in *Arizona v. California*.

5.3.2 Arizona DWR may, after consultation with affected Colorado River contractors in Arizona, agree to a program to share the impact of shortages with MWD after the Interim Period in the same manner as provided in paragraph 5.2.2 or 5.2.3 above.

5.4 **Termination of MWD's Shortage Year Obligations.** MWD's obligation to compensate for the impact of shortages to the State of Arizona under the terms of this agreement shall terminate at the earliest of any of the following events:

5.4.1 MWD has, by performance of the obligations of this agreement, intentionally forborne a cumulative total of one million acre feet of water for the benefit of the State of Arizona by causing the reduction in consumptive use of Colorado River water in the State of California below 4.4 maf per year; or

5.4.2 In any year after the Interim Period, the Secretary makes a Flood Control Release; or

5.4.3 MWD and Arizona DWR have agreed upon an alternative shortage reparation that expressly terminates the obligations of this agreement.

- 5.5 **Notice of Compliance.** If the Annual Operating Plan promulgation process indicates that a shortage will be determined for the upcoming year, then within 30 days of MWD's receipt of such notice, but in no event later than November 15 of the current year, MWD shall send notice to Arizona DWR indicating the manner in which MWD will fulfill its obligations set forth in sections 5.2 or 5.3 above.
- 5.5.1 If subsequent to the transmittal of the final Annual Operating Plan, the Secretary determines that the current year is a Shortage Year, MWD shall within 60 days of receipt of notice by the Secretary of such shortage, send notice to Arizona DWR indicating the manner in which MWD will fulfill its obligations set forth in sections 5.2 or 5.3 above.
- 5.5.2 Arizona DWR shall have 15 days from receipt of MWD's Notice of Compliance in which to object to the manner of MWD's intended compliance by providing a Notice of Objection to MWD. The Notice of Objection shall specify the basis for the objection and shall set forth the method(s) of compliance by which Arizona DWR would be satisfied. Failure to send MWD Notice of Objection within the 15 day period shall be a conclusive acceptance by Arizona DWR of MWD's Notice of Compliance.
- 5.5.3 If Arizona DWR sends a Notice of Objection, MWD shall have 15 days from receipt of such notice to either accept and comply with the notice, or send Arizona DWR a Notice of Dispute. In the event that a Notice of Dispute is sent, it shall be resolved pursuant to Article 9 below. Failure by MWD to send a Notice of Acceptance or Dispute within 15 days of receipt of the Notice of Objection shall be a conclusive acceptance by MWD of the Notice of Objection, and MWD shall adopt the method(s) of compliance stated in the Notice of Objection.
- 5.6 **MWD's Obligations in the Event of Suspension of the Interim Surplus Guidelines.** In the event that the Interim Surplus Guidelines are suspended prior to the end of the Interim Period under section 5 of the Interim Surplus Guidelines, MWD shall have the following obligations:
- 5.6.1 MWD shall forbear from diverting water in an amount equal to the volume of Colorado River water diverted during the Interim Period for Off Stream Banking from the Colorado River Aqueduct by and for the benefit of MWD under any Full Domestic Surplus determination.
- 5.6.2 MWD's obligation to forbear as set forth in section 5.6.1 shall be fulfilled beginning in the next Normal or Shortage Year determined by the Secretary. The water forborne shall accrue to the benefit of the Colorado River reservoir system and shall become water controlled by the United States for future release under the terms of the Decree in *Arizona v. California*.

- 5.6.3 MWD's obligation to forebear in this section 5.6 shall be limited to no more than 200,000 af annually, until completed.
- 5.6.4 MWD's obligations incurred under this section 5.6 shall terminate on the earlier of the date on which MWD's obligation has been satisfied or the first day of the first year after the suspension of the Interim Surplus Criteria in which the Secretary determines a surplus under the 70R Strategy or makes a Flood Control Release.
- 5.6.5 MWD shall follow the same procedure for notice of compliance of its obligations under this paragraph 5.6 as set forth in paragraph 5.5 above.

ARTICLE 6

OBLIGATIONS OF THE STATE OF ARIZONA

- 6.1 This article sets forth the limitations on use of surplus water by Arizona contractors during the Interim Period in Partial Domestic Surplus Year, Full Domestic Surplus Year, Quantified Surplus Year and Flood Control Surplus Year conditions.
- 6.2 In Partial Domestic Surplus Year and Full Domestic Surplus Year conditions, the State of Arizona shall partially waive its contractual rights to surplus Colorado River water and insure that Arizona contractors for Colorado River water shall intentionally forbear use of a portion of Arizona's 46% share of surplus as follows:
 - 6.2.1 **Partial Domestic Surplus Year.** The State of Arizona shall insure that consumptive use of Colorado River water in the State of Arizona for any Partial Domestic Surplus Year does not exceed 2.8 maf plus one half of the Direct Delivery Domestic Use in Arizona in excess of the State of Arizona's basic apportionment of 2.8 maf.
 - 6.2.2 **Full Domestic Surplus Year.** The State of Arizona shall insure that consumptive use of Colorado River water in the State of Arizona for any Full Domestic Surplus Year does not exceed 2.8 maf plus the Direct Delivery Domestic Use in Arizona in excess of Arizona's basic apportionment of 2.8 maf.
- 6.3 **Quantified Surplus Year.** In years when the Secretary determines that water should be released for beneficial consumptive use to reduce the risk of potential reservoir spills based on the 70R Strategy, MWD and the State of Arizona agree that the Secretary is expected to determine and allocate a Quantified Surplus sequentially as follows. The State of Arizona shall insure that Arizona's orders for Colorado River water to the Secretary for such year are based on the following determination and allocation:

6.3.1 The Secretary establishes the volume of the Quantified Surplus;

6.3.1.1 The Secretary is expected to allocate and distribute the Quantified Surplus 50% to California; 46% to Arizona and 4% to Nevada subject to the following:

6.3.1.2 California's share is expected to be allocated first to meet basic apportionment demands and MWD's Direct Delivery Domestic Use and Off-Stream Banking demands, and then to California Priorities 6 and 7 and other surplus contracts. Nevada's share is expected to be allocated first to meet basic apportionment demands and then to the remaining Direct Delivery Domestic Use and Off Stream Banking demands. Arizona's share is expected to be allocated to surplus demands in Arizona including Off Stream Banking and interstate banking demands.

6.3.1.3 The Secretary is expected to distribute any unused share of the Quantified Surplus in accordance with section 1(B) of the Interim Surplus Guidelines.

6.3.1.4 The Secretary is expected to determine whether MWD, SNWA and Arizona have received the amount of water they would have received under a Full Domestic Surplus if a Quantified Surplus had not been declared. If they have not, then MWD, SNWA and Arizona contractors may place orders for surplus water as if the Secretary had determined a Full Domestic Surplus.

6.3.1.5 The State of Arizona and MWD agree that any remaining water shall remain in storage in Lake Mead.

6.4 **MWD's Use of Surplus Water.** The State of Arizona will not object to the Secretary making Colorado River water available to MWD in accordance with the Interim Surplus Guidelines so long as such release and use are consistent with the terms of this agreement.

ARTICLE 7 CONDITIONS PRECEDENT TO THE OBLIGATIONS OF THE STATE OF ARIZONA AND MWD

7.1 The following are conditions precedent to the rights and obligations of this agreement:

- 7.1.1 Quantification Settlement Agreement. The Quantification Settlement Agreement shall be in full force and effect no later than December 31, 2002.
- 7.1.2 A duly effective Joint Resolution of the Arizona Legislature authorizing and approving this agreement.
- 7.2 If the conditions in this Article are not timely satisfied or waived, this agreement will be void.

ARTICLE 8

NOTICE AND ACCOUNTING PROVISIONS

- 8.1 **Decree Accounting.** Arizona DWR and MWD will work cooperatively with the Bureau of Reclamation and other interested persons to develop a decree accounting format that will clearly and accurately reflect the amount of Colorado River water MWD has diverted under the Full Domestic Surplus or Partial Domestic Surplus Years.
- 8.2 **MWD's Groundwater Storage Records.** Within 60 days of receipt by MWD of the final Decree Accounting Record for a Year, MWD will provide to Arizona DWR notice of the amount of Full Domestic Surplus Colorado River water which MWD has diverted through the Colorado River Aqueduct for Off Stream Banking.
- 8.3 **Notice.** Any notice under this agreement shall be in writing and delivered by personal service, or by express delivery or courier service that guarantees delivery overnight and provides written confirmation of such delivery, to the following addresses:
 - 8.3.1 **MWD:**

Metropolitan Water District of Southern California
Attention: General Manager
P.O. Box 54153
Los Angeles, California 90054-0153

For personal or overnight delivery:

Metropolitan Water District of Southern California
Attention: General Manager
700 North Alameda Street
Los Angeles, California 90012

Telephone: 213-217-6211
Facsimile: 213-217-6655

Copy to: Attention: General Counsel

8.3.2 State of Arizona:

Arizona Department of Water Resources
Attention: Director
500 North Third Street
Phoenix, Arizona 85004

Telephone: 602-417-2410
Facsimile: 602-417-2415

Copy to: Attention: Chief Counsel

**ARTICLE 9
DISPUTE RESOLUTION**

- 9.1 In the event that a dispute arises over any action to be undertaken pursuant to the terms of this agreement, all parties recognize that time is of the essence in the conduct of the parties under the terms of this agreement. Nothing herein shall limit any party's right to seek or oppose provisional relief in any dispute.
- 9.2 The parties agree that the Colorado River water resources being forborne, allocated and made available for use in other States of the Lower Division under the terms of this agreement are unique and very likely cannot be replaced in timely fashion by other resources. Accordingly, the parties agree that in any dispute, one party will likely be requesting an injunction ordering specific performance of the terms of this agreement. The parties agree that a party opposing the specific enforcement of this agreement shall have the burden to show by clear and convincing evidence that alternative resources are in fact available and a remedy at law is otherwise adequate.

**ARTICLE 10
GENERAL PROVISIONS**

- 10.1 **Force Majeure.** If the performance, in whole or in part, of the obligations of the respective parties under this agreement is hindered, interrupted or prevented by wars, strikes, lockouts, fire, acts of God or by other acts of military authority, or by any other cause beyond the control of the respective

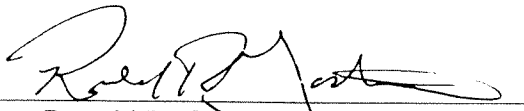
parties hereto, such obligations of the respective parties under this agreement shall be suspended to the extent and for the time the performance thereof is affected by any such act. Upon the cessation of any such hindrance, interruption or prevention, all parties shall become obligated to resume and continue performance of their respective obligations under this agreement. Notwithstanding any act described in this Section, the Parties shall diligently undertake all reasonable effort to perform their duties in accordance with this agreement.

- 10.2 **Records.** Each of the parties shall maintain and make available for inspection by the other party, during regular office hours, accurate records pertaining to the times and amounts of deliveries of all Colorado River water released, diverted, consumptively used or stored by that party.
- 10.3 **No Conveyance.** This agreement shall not be construed as a conveyance, abandonment or waiver of any water right, or right to the use of water, nor shall it be construed as conferring any right whatsoever upon any person, firm, corporation or other public or private entity not a party to this agreement.
- 10.4 **Governing Law.** Federal law shall be applied as appropriate to the extent that it bears on the resolution of any claim or issue relating to the permissibility of a use of water under this agreement.
- 10.5 **Binding Effect.** This agreement is binding upon and will inure to the benefit of the parties and, upon dissolution, the legal successors and assigns of their assets and liabilities. No party may assign any of its rights or delegate any of its duties under this agreement, except that any state agency duly authorized to assume the rights and liabilities of this contract under state law may be substituted for its predecessor state agency. Any assignment or delegation made in violation of this agreement is void.
- 10.6 **Due Authority.** Any person signing this agreement represents that he/she has full power and authority to do so, and, that his/her signature is legally sufficient to bind the party on whose behalf he/she is signing.
- 10.7 **Entire Agreement.** This agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the parties.
- 10.8 **Modification.** This agreement may be supplemented, amended, or modified only by the written agreement of the parties. Except as expressly provided in this subarticle, no supplement, amendment or modification shall be effective unless ratified and approved by the Arizona Legislature. Ratification and approval by the Arizona Legislature shall not be required for any supplement, amendment or modification of this agreement made pursuant to subarticles 5.2.2, 5.2.2.1, 5.2.3, 5.3.2 and 8.3 of this agreement.

- 10.9 **Joint Defense.** The parties agree to proceed with reasonable diligence and use reasonable best efforts to jointly defend any lawsuit or administrative proceeding challenging the legality, validity, or enforceability of any term of this agreement, or any party's right to act in accordance with any of the terms of this agreement.
- 10.10 **Recitals.** The Recitals to this agreement are a part of this agreement to the same extent as the articles.
- 10.11 **A.R.S. § 38-511.** The parties are hereby notified of Arizona Revised Statutes section 38-511.

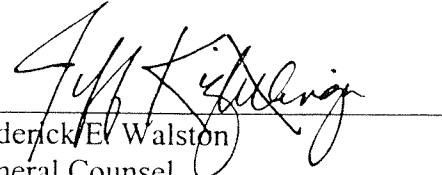
In Witness Whereof, the State of Arizona and the Metropolitan Water District of Southern California Enter into this Agreement by Signing Below:

**METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA**

By: 
Ronald R. Gastelum
General Manager

Date: May 22, 2001

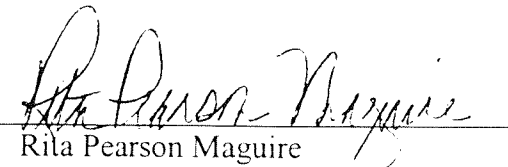
Approved as to form:

By: 
Roderick E. Walston
Asst. General Counsel

Date: MAY 22, 2001

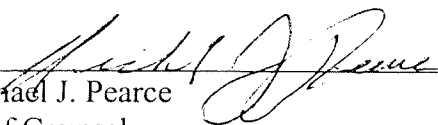
STATE OF ARIZONA

Arizona Department of Water Resources

By: 
Rita Pearson Maguire
Director of Water Resources

Date: May 23, 01

Legal Certification: The foregoing agreement is in proper form and within the powers and authorities granted to the Arizona Department of Water Resources under Arizona Law, as supplemented by Senate Joint Resolution 1001, 45th Legislature, First Regular Session.

By: 
Michael J. Pearce
Chief Counsel

Date: May 23, 2001